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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Fir: Named Applicant: Mitsukawa  
Serial No.: C9840327  
Filed: April 23, 2004  
Fec: INTERACTIVE TELEVISION SYSTEM  
Art Unit: 2612  
Examiner: Chang  
SUP4366  
December 10, 2005  
750 B STREET, Suite 3121  
San Diego, CA 92101

APPEAL BRIEF

Commissioner of Patents and Trademarks

Dear Sir:

This brief is submitted under 35 U.S.C. § 34 and is in accordance with 37 C.F.R. Parts 1, 5, 1C, 11, and 41, effective September 13, 2004 and published at 69 Fed. Reg. 155 (August 2004). This brief is further to Appellant's Notice of Appeal filed herewith.

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(1) Real Party in Interest

The real party in interest is Story Corp.

(2) Related Appeals/Interferences

Appeals have been filed in serial nos. 09/834,511 and 09/840,457 that may tangentially be related to this appeal.

(3) Status of Claims

Claims 2-19 are pending and finally rejected, and claim: 1 and 20-23 have been canceled.

(4) Status of Amendments

An amendment canceling Claims 1 and 20-25 has been submitted and presumably will be admitted for appeal.

(5) Summary of Claimed Subject Matter

As an initial matter, it is noted that according to the Patent Office, the concise explanations under this section are for Board convenience, and do not supersede what the claims actually state, 69 Fed. Reg. 155 (August 2004), see page 48975. Accordingly, nothing in this Section should be construed as an attempt that limits the actual claim language.

Claim 2 requires an interactive television system to have an Internet content provider (ISP) connection 14, figure 1, page 5, line 8, a television signal source (25, figure 1, page 6, line 12), and an ISP, line 16, page 5, line 8.

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interactive television (22, figure 1, page 6, line 10) that receives content from the Internet content provider and the television signal source. The interactive television includes a program for allowing a consumer to select a television channel or a virtual channel. Also, the interactive television includes means for periodically updating the virtual channel with updates from an associated Web page, with the virtual channel being established by the Web page and being updated without user request, figure 3, page 11, lines 9-11 and second full paragraph.

Claim 12 recites a system for enabling a consumer to access the Internet using a television (System) having a television tuner (36, figure 2, page 7, preamble line) and including plural television channels and a virtual channel, with the virtual channel representing a Web page. The system includes means (e.g., 18, supra) for periodically sending updates to the Web page to the television, such that the virtual channel is periodically updated thereby without user interaction. supra.

(6) **Grounds of Rejection to be Reviewed on Appeal**

- (a) Claims 2-14 and 16-19 have been rejected under 35 U.S.C. §102 as being anticipated by Sony's prior art publication, WO 93/56188.
- (b) Claim 15 has been rejected, per the formal statement in the Office Action, under 35 U.S.C. §105 as being unpatentable over Portuesi (USPN 5,987,569).

(7) **Argument**

As an initial matter, it is noted that according to the Patent Office, a new ground of rejection in an examiner's answer should be "rare", and should be levied only in response to such things as newly presented

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arguments by Appellant; or to address a claim that the examiner previously failed to address, §9 Fed. Reg. 155 (August 2004), see, e.g., pages 49962 and 49963. Furthermore, a new ground of rejection must be approved by the Technology Center Director or designee and in any case must come accompanied with the initials of the conferees of the appeal conference, *Id.*, page 49979.

- (a) The independent claims clearly specify that a virtual channel is updated without user interaction based on new content from the Web page *Id.*, identifies or establishes the virtual channel, as discussed, e.g., in relation to block 56 and the accompanying discussion in the specification. In contrast, the relied-upon sections of Hsu do not appear to do this. Specifically, no portion of Hsu has been pointed to for the allegation regarding "updates", nor does there seem to be any in Hsu. Once a virtual channel is established, it evidently remains static; at least, there are no automatic updates. Page 11, lines 19-27 of Hsu does not discuss updating a virtual channel, but rather updating a template that correlates a Web page with a topic. Page 12 likewise does not update a virtual channel, but rather adapts a template of Web pages for changing user profiles. In other words, the list of Web pages that is established by the user's profile may change, but there is no mention of updating a virtual channel with new content from the same Web site without user interaction as set forth in, e.g., Claim 2. Accordingly, it appears that the rejections have been overcome. Indeed, the new citation to page 15, lines 13-15 of Hsu et al. bolster's Appellant's point. This section divulges that an object associated with a link may be "downloaded from the server when the link is first highlighted", i.e., selected by the user. User selection is the way links become highlighted. Thus, the relied-upon section of Hsu et al. proves the distinction being made by Appellant.

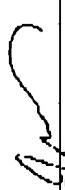
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- (b) Apropos the obviousness rejection, it appears that while Hsu is not mentioned in the formal statement of the rejection, the rejection is based on it, because Hsu is mentioned in the body of the rejection. The reference mentioned in the formal statement of rejection (Porterai) is not mentioned in the body of the rejection. Clarification was requested in Appellant's prior response, to no avail.
- Interestingly, the body of the rejection appears to continue from what "official notice" of DSL lines with a new reference (Wastenrant) now being used as a teaching of the allegedly well-known feature. However, Appellant is not claiming "DSL" in a vacuum, but rather in combination with particularity recited additional elements. Left unexplained in the rejection is the prior art motivation to alter Hsu et al. with Wesserman to arrive at the present claims.

Respectfully submitted,

  
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APPENDIX A - APPEALED CLAIMS

2. A interactive television system, comprising:
- at least one Internet content provider;
  - at least one television signal source; and
- at least one interactive television receiving content from the Internet content provider and the television signal source, the interactive television including a program for selecting a television channel or a virtual channel, the interactive television allowing a consumer to select a television channel or a virtual channel, the interactive television including means for periodically updating the virtual channel with updates from at associated Web page, the virtual channel being established by the Web page and being updated without user request.
3. The system of Claim 2, wherein the program includes:
- logic means for providing plural interactive television channels;
  - logic means for enabling a user to select an interactive television channel; and
  - logic means for determining whether the interactive television channel is a television channel or a virtual channel.
4. The system of Claim 3, wherein each television channel is associated with a respective television signal source, and the program further comprises:
- logic means for displaying television broadcast content from the television signal source if a television channel is selected.

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5. The system of Claim 4, wherein each virtual channel is associated with an Internet content provider, and the program further comprises:  
logic means for displaying Internet content from the Internet content provider if a virtual channel is selected.

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6. The system of Claim 5, wherein the Internet content provider is a Web server and the Internet content is stored in a memory of the interactive television.
  7. The system of Claim 6, wherein the program further comprises:  
Internet content is a Web page.
  8. The system of Claim 6, wherein the program further comprises:  
logic means for prompting a consumer for input regarding an interactive television system.
  9. The system of Claim 5, wherein the program further comprises:  
logic means for receiving consumer input at an interactive television.
  10. The system of Claim 9, wherein the program further comprises:  
logic means for transmitting the consumer input to an interactive television server.
  11. The system of Claim 9, wherein the program further comprises:  
logic means for transmitting the consumer input to an Internet content provider.

12. A system for enabling a consumer to access the Internet using a television having at least one television tuner, the television including plural television channels and at least one virtual channel, comprising:
  - a virtual channel representing a Web page, the system comprising:
    - means for periodically sending updates to the Web page to the television, such that the virtual channel is periodically updated thereby without user interaction.
13. The system of Claim 12, further comprising a memory in the television for storing content of the virtual channel.
14. The system of Claim 12, further comprising a memory remote from the television for storing content of the virtual channel.
15. The system of Claim 12, further comprising a DSL line attached to the television for sending the updates.
16. The system of Claim 12, further comprising a cable modem line attached to the television for sending the updates.
17. The system of Claim 12, wherein the updates are sent via at least one vertical blanking interval (VBI) of a television signal.

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18. The system of Claim 12, further comprising:  
a conventional television control device receiving consumer input.
19. The system of Claim 18, wherein the system causes the input to be received and stored in memory inside the television at a first time, and then transmitted to a set remote from the television at a second time.

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APPENDIX B - EVIDENCE

Note [this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49578.]

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APPENDIX C - RELATED PROCEEDINGS

Note (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49578.

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